

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III,)	
HARRY SMITH, JR., AND ROSLYN)	
WOODARD SMITH,)	
)	
Plaintiffs)	
)	
v.)	C.A. No. 04-1254 GMS
)	
CITY OF WILMINGTON, JOHN)	
CIRITELLA, THOMAS DEMPSEY, and)	
MATTHEW KURTEN,)	
)	
Defendants.)	
)	

ORDER

WHEREAS, on March 22, 2007, the court held a pretrial conference in the above-captioned action;

WHEREAS, during the pretrial conference, the court addressed the plaintiffs' motion in limine to exclude testimony regarding the following: (1) that Harry Smith, III ("Mr. Smith") was suspected of a carjacking or attempted carjacking; (2) that Mr. Smith possessed a scalpel; and (3) that Mr. Smith possessed a gun, shotgun, or any other weapon;

WHEREAS, the court granted the motion in part, ruling that the defendants could not refer to Mr. Smith's acts on Washington Street on the day of the incident in question as a "carjacking;"

WHEREAS, the court reserved ruling on the remaining issues, in anticipation of further support for the motion to be provided by the plaintiffs;

WHEREAS, on March 28, 2007, the plaintiffs filed a document (D.I. 185) providing further support for their motion to exclude the evidence;

WHEREAS, after having considered the plaintiffs' additional support, the court concludes that it will deny the remainder of the plaintiffs' motion, as the additional support does not directly establish what the defendants knew with respect to whether Mr. Smith possessed a scalpel or any other weapon; and

WHEREAS, the court concludes that the plaintiffs can demonstrate to the jury through cross-examination the defendants' alleged lack of knowledge as to whether Mr. Smith possessed a scalpel or any other weapon;

IT IS HEREBY ORDERED that:

1. The plaintiffs' Motion in Limine to Exclude Evidence that Mr. Smith possessed a scalpel (D.I. 138, 185) is DENIED.
2. The plaintiffs' Motion in Limine to Exclude Evidence that Mr. Smith possessed a gun, shotgun, or any other weapon (D.I. 138, 185) is DENIED.

Dated: April 5, 2007

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE